

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

THE ESTATE OF JOSHUA A. MCLEMORE,)
by and through its Administrator,)
Melita L. Ladner,)

Plaintiff,)

v.)

JACKSON COUNTY, INDIANA; RICK)
MEYER, Jackson County Sheriff; CHRIS)
EVERHART, Jackson County Jail)
Commander; SCOTT FERGUSON;)
MILTON EDWARD RUTAN, LPN;)
RONALD EVERSON, MD; and)
ADVANCED CORRECTIONAL)
HEALTHCARE, INC.,)

Defendants.)

Case No.: 4:23-cv-00057-TWP-KMB

**DEFENDANTS ADVANCED CORRECTIONAL HEALTHCARE, INC. AND RONALD
EVERSON, M.D.'S ANSWER, ADDITIONAL DEFENSES, AND JURY DEMAND**

Come now Defendants Advanced Correctional Healthcare, Inc. and Ronald Everson, MD, (“ACH Defendants”) by counsel, and for their Answer, Additional Defenses, and Jury Demand in response to Plaintiff’s Complaint (Dkt. 1), state the following:

I. INTRODUCTION

1. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.
2. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.
3. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

4. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.
5. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.
6. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.
7. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.
8. ACH Defendants deny the allegations in this paragraph.

II. JURISDICTION AND VENUE

9. Upon information and belief, ACH Defendants admit that this Court may have jurisdiction over the federal claims involved in this case.
10. Upon information and belief, ACH Defendants admit that this Court may be the proper venue over the federal claims involved in this case.

III. PARTIES

11. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.
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15. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

16. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

17. ACH Defendants admit that Defendant Ronald Everson, M.D., provided physician services to the Jackson County Jail pursuant to the contract with Defendant Advanced Correctional Healthcare. ACH Defendants deny the remaining allegations in this paragraph.

18. ACH Defendants deny the allegations in this paragraph.

IV. FACTS

A. Josh McLemore

19. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

20. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

21. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

B. Josh was suffering an acute psychotic episode when he was arrested and jailed for pulling a nurse's hair in the emergency room where he was being evaluated.

22. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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36. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

37. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

C. Jackson County officials kept Josh locked in solitary confinement, naked, for the next three weeks, where he continued to suffer from active psychosis while receiving no medical or mental health treatment and virtually no human contact.

38. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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43. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

44. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

45. ACH Defendants deny the allegations contained in this paragraph.

46. ACH Defendants deny the allegations contained in this paragraph.

D. Josh remained wide awake for most of his time in solitary confinement, displaying erratic and abnormal behaviors that would have made it obvious to any lay person

that something was seriously wrong with him and that he was at risk of substantial harm.

47. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

48. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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E. Josh had virtually no meaningful access to a toilet while confined.

50. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

51. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

52. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

F. Jail staff kept Josh locked up in his small cell 24 hours a day, seven days a week, except when they pulled him out and strapped him in restraints so they could put him under the shower or clean his cell.

53. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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67. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

68. ACH Defendants deny the allegations contained in this paragraph.

G. As a result of his psychosis, Josh's nutritional intake at the jail was dangerously insufficient and put him at risk of serious harm, including death, from malnutrition and dehydration.

69. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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H. Josh's last day at the Jackson County Jail

73. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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101. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

102. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

I. Josh McLemore's suffering and death were the result of multiple acts of indifference, as well as systemic and unconstitutional deficiencies relating to the County's services, policies, procedures, customs, practices, and training programs.

103. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

Deliberate Indifference by Defendant Sheriff Meyer

104. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

105. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

106. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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110. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

Deliberate Indifference by Defendant Commander Everhart

111. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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116. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

117. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

Deliberate Indifference by Defendant Ferguson

118. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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126. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

127. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

Deliberate Indifference by Defendant Rutan

128. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

129. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

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147. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

148. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

Deliberate Indifference by Defendant Ronald Everson

149. ACH Defendants deny the allegations contained in this paragraph.

150. ACH Defendants deny the allegations contained in this paragraph.

151. ACH Defendants deny the allegations contained in this paragraph.

152. ACH Defendants deny the allegations contained in this paragraph.

153. ACH Defendants deny the allegations contained in this paragraph.

The County's Failure to Adopt Reasonable Policies and Procedures to Protect People with Serious Medical and Mental Health Issues

154. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

155. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

156. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

157. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

Inadequate Medical and Mental Health Staffing and Services at the Jackson County Jail

158. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

159. ACH Defendants admit that Advanced Correctional Healthcare, Inc. contracted with Jackson County to provide medical services at Jackson County Jail. ACH Defendants are without sufficient information to admit or deny the remaining allegations in this paragraph.

160. ACH Defendants deny the allegations contained in this paragraph.

161. ACH Defendants deny the allegations contained in this paragraph directed towards Defendant Everson and are without sufficient information to admit or deny any remaining allegations.

162. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

163. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

County's Failure to Adequately Train Staff

164. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

165. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

166. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

County's Unconstitutional Customs and Practices

167. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

168. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

169. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

170. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

171. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

172. ACH Defendants are without sufficient information to admit or deny the allegations contained in this paragraph.

ACH's Unconstitutional Customs and Practices, Failures to Train, and Decisions by Policymaker

- 173. ACH Defendants deny the allegations in this paragraph.
- 174. ACH Defendants deny the allegations in this paragraph.
- 175. ACH Defendants deny allegations in this paragraph.
- 176. ACH Defendants deny the allegations in this paragraph.
- 177. ACH Defendants deny the allegations contained in this paragraph.
- 178. ACH Defendants deny the allegations contained in this paragraph.
- 179. ACH Defendants deny the allegations contained in this paragraph.

V. CAUSE OF ACTION

42 U.S.C. § 1983: Violations of the Fourteenth Amendment to the United States Constitution

- 180. ACH Defendants deny the allegations contained in this paragraph.

VI. JURY DEMAND

ACH Defendants demand a trial by jury.

VII. RELIEF

ACH Defendants deny that the Plaintiff is entitled to any form of relief.

WHEREFORE, Defendants Advanced Correctional Healthcare, Inc. and Ronald Everson, MD, ("ACH Defendants") by counsel, respectfully request that Plaintiff take nothing by way of his Complaint, that fees and costs be awarded to the Defendant, and that the Court grant all further just and appropriate relief.

ADDITIONAL DEFENSES

1. If ACH Defendants have failed to respond to any of the allegations or rhetorical paragraphs in Plaintiff's Complaint, they specifically deny them at this time.
2. Plaintiff's Complaint, in part or in whole, fails to state a claim upon which relief can be granted.
3. Plaintiff's damages, if any, were proximately caused, in part or in whole, by acts or omissions for which Plaintiff bears fault, and any claim he may have should be barred by the doctrine of contributory negligence.
4. ACH Defendants are immune from liability for Plaintiffs' claims to the extent the doctrines of qualified immunity, absolute or sovereign immunity, legislative immunity, quasi-legislative immunity, judicial immunity, or quasi-judicial immunity apply.
5. ACH Defendants are entitled to a set-off against any judgment entered in favor of the Plaintiff in the amount of collateral source payments received by the Plaintiff following the incident which gave rise to this lawsuit.
6. ACH Defendants' duties were limited to those that were delegated to them or that they voluntarily undertook.
7. No act or omission by any Defendant proximately caused any injury alleged by Plaintiff.
8. Any recovery for medical or mental health expenses is limited to only the reasonable value of the services provided.
9. Neither the existence nor lack of any practice, policy, or procedure with respect to any Defendant served as the moving force behind any violation of Plaintiff's Constitutional rights or any other alleged injury to Plaintiff.
10. ACH Defendants incorporate by reference any additional affirmative defenses previously, concurrently, or subsequently asserted by any other Defendant.

11. ACH Defendants reserve the right to further plead defenses upon completion of discovery.
12. Dr. Everson was not personally involved in the alleged Constitutional violation.
13. The medical care rendered to decedent by Dr. Everson was reasonable and within the community standard of care.
14. Decedent's medical care in the jail was not dictated or driven by a policy, custom, systemic issue, or lack of policy by ACH.
15. Plaintiff's recovery is governed by the limitations of the Indiana Adult Wrongful Death Act.

Respectfully submitted

/s/ Carol A. Dillon

Carol A. Dillon, #25549-49

*One of the Attorneys for Defendants
Advanced Correctional Healthcare, Inc. and
Ronald Everson, MD*

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Facsimile: (317) 567-2220
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austin@bleekedilloncrandall.com

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2023, a true and complete copy of the foregoing document was served electronically upon all counsel of record via email generated by the Court's ECF system to the following:

All electronically ECF Registered Parties

/s/ Carol A. Dillon
Carol A. Dillon, #25549-49